UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

ST. LOUIS CHILDREN'S HOSPITAL

Employer

and Case 14-RC-12405

MISSOURI NURSES ASSOCIATION (MONA),
UNITED AMERICAN NURSES (UAN),
AMERICAN NURSES ASSOCATION (ANA),
AFL-CIO, CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[1] in this proceeding the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At hearing, the hearing officer excluded evidence the Employer

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[1] The parties stipulated that the facts developed in Case 14-RC-12170, based on the Petitioner's earlier petition for the same unit, are still applicable to the present case. Contrary to the Employer's assertions in its brief, the parties did not stipulate that in case of conflicts in evidence between the two transcripts, the evidence in the current transcript would prevail. Rather, the parties simply agreed that the present transcript would supplement or augment the prior transcript.

sought to introduce on the effect of the Board's single-facility presumption on the proliferation of health care units in the health care industry, evidence of strikes in the health care industry, and evidence as to a specific strike at an area hospital. I issued an Order on November 19, 2002 denying the Employer's request to appeal the hearing officer's exclusion of this evidence, and deferring a final ruling on the appropriateness of the exclusion of this evidence to this Decision. In the context of the record as a whole, and after consideration of the offers of proof, I affirm the hearing officer's rulings on the exclusion of this evidence.

The legislative history cautioning against undue proliferation of bargaining units in the health care industry referred to matters of unit composition *within a single facility*, which could foster jursidictional disputes and strikes by small units of employees, thereby hampering the operations of the entire facility. The issue in the present case is not one of unit composition but of unit scope. The Board has concluded that Congressional intent regarding undue proliferation of bargaining units has little bearing on unit scope issues because jursidictional disputes and work stoppages at one facility would not likely interfere with the operation of other facilities of the same employer. *Manor Healthcare Corp*., 285 NLRB 224, 225-226 (1987)

The evidence proffered by the Employer regarding the number of strikes throughout the industry over the last several years, and a strike at a nearby hospital, would not establish a real danger that a single-facility bargaining unit here would cause more work stoppages than would be the case with a larger unit. Nor would the Employer's proffered statistical information about strikes establish that a single-facility unit in this case would in any way impede continuity of patient care at these facilities. The Employer's rejected exhibits do not reflect whether the bargaining units involved were multi-facility or single-facility units. Rejected Exhibit 121 also fails to reflect whether the strikes or work stoppages occurred at unionized facilities. Further, a

finding that the registered nurses (RNs) at the hospital constitute an appropriate single-facility unit does not mean that each of the Employer's other three locations would be found to constitute appropriate single-facility units. Thus, the highly speculative evidence offered by the Employer would not establish that a single-facility unit here would create 32 separate bargaining units or would otherwise lead to a proliferation of bargaining units among the Employer's other locations. The Employer's testimonial evidence, and its Exhibits 121, 122, and 123 were properly excluded.

2. The Employer, St. Louis Children's Hospital, is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6*)* and (7) of the Act.

The Petitioner seeks to represent a unit of full-time and regular part-time RNs, including PRNs and per diem nurses, employed by the Employer at the Employer's hospital facility located at 1 Children's Place. The Employer, contrary to the Petitioner, contends that the appropriate unit should also include RNs who work at its Clayton Avenue, South Taylor Avenue, and Forest Park Boulevard facilities which are within three to four blocks of the main hospital building located at 1 Children's Place. The Employer also contends that the Board's traditional formula for determining the inclusion of PRNs and per diem nurses, articulated in *Davison-Paxon*, 185 NLRB 21, 24 (1970), is inappropriate and argues that the eligibility formula should

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[2] The Employer, St. Louis Children's Hospital, located in St. Louis, Missouri, is an acute care hospital within the meaning of 29 CFR §103.30(f)(2).

be 200 hours in a 12-month period.[3] The unit sought by the Petitioner consists of approximately 850 employees, while the unit sought by the Employer consists of approximately 932 employees. For the reasons set forth below, I have determined that the appropriate unit is properly limited to the RNs located at the 1 Children's Place facility, and the *Davison-Paxon* forumla is the appropriate formula to use to determine the eligibility of the PRNs and per diem nurses. Accordingly, I have found that the appropriate unit consists of approximately 850 employees.

I. OVERVIEW

The Employer is a non-profit acute care hospital which provides care for children and their families. The Employer employs about 2,500 employees at four locations. Approximately 2,200 employees, including 850 RNs, work in the main hospital building located at 1 Children's Place (the hospital). One hundred employees, including 13 RNs, work at a building located on Forest Park Boulevard, while 235 employees, including about 62 RNs, work in a building on Clayton Avenue, and 15 employees, including 7 RNs, work in a building on South Taylor Avenue. All locations are within four blocks of the hospital. The departments located at the Clayton, Forest Park, and Taylor facilities were once located at the hospital but were moved years ago due to space constraints. The Employer is currently planning to expand the current hospital building and also plans to add a building on top of an existing hospital parking lot. These construction projects are still in the "design phase" which phase will be completed in 2003. Once construction begins, the projects are expected to take 3 to 4 years to complete.

The Employer is located on the Washington University Medical Center campus which includes Barnes-Jewish Hospital, BJC Health System (BJC) headquarters, and the Washington

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[3] The Employer asserts, on page 107 of its brief, that the eligibility formula should be 208 hours in a 12-month period.

University School of Medicine. In 1994, the Employer merged into BJC which includes Barnes-Jewish Hospital, Christian Hospital Northeast-Northwest, and Missouri Baptist Hospital. Employees of these other entities on the medical campus and approximately 95 percent of the Employer's employees use shuttle buses. The shuttle service that runs between the hospital and the Clayton facility is available from 4 a.m. until 11 p.m., Monday through Friday. The shuttle service between Forest Park and the hospital and between Taylor and the hospital operates 24 hours a day, including weekends.

The organizational structure of the Employer consists of a president who is the head of the organization, five vice-presidents, and two service leaders or directors, all of whom report to the president. Vice-President of Family & Child Services Velinda Block, is also the Chief Executive Nurse and is responsible for 11 different departments within the hospital: Behavioral Health and Child Development, Emergency Services, Neuro Services, Newborn Intensive Services, Pediatric Intensive Services, Pediatrics, Pharmacy-Lab-Materials, Professional Practice & Systems, Psychology, Radiology, and Surgical Services. Most RNs who work at the hospital work in these 11 departments. Each department has a supervisor, manager, or director who in turn reports to the vice-president of Family & Child Services. Most of the RNs at the Clayton, Taylor, and Forest Park facilities report to local supervision who in turn report to a different vice-president, Vice-President of Pediatric Services Development Todd Sklamberg.

II. THE SCOPE OF THE UNIT

The Employer contends that the petitioned-for single-facility unit is not appropriate and that the unit should also include the Answer Line nurses and other RNs employed at the Clayton Avenue building, as well as RNs employed at the Taylor Avenue and Forest Park buildings. The Board has substantial discretion when it selects an appropriate bargaining unit and its mandate is to select "an appropriate unit, not the most appropriate unit." *NLRB v. HeartShare Human Services of New York, Inc.,* 108 F.3d 467, 470-71 (2nd Cir. 1997), enfg. *HeartShare Human*

Services of New York, Inc., 320 NLRB 1 (1995) In evaluating the appropriateness of a requested single-facility unit, the Board relies on a fundamental presumption:

> The Board has consistently held that a single facility unit geographically separated from the other facilities operated by the same employer is presumptively appropriate even though a broader unit might also be appropriate. *Manor Healthcare Corp*., 285 NLRB 224, 225 (1987)

Passavant Retirement and Health Center, 313 NLRB 1216 (1994)

The Board, with court approval, uses the same single-facility presumption in fashioning health care units. *Manor Healthcare Corp,* supra; *Presbyterian University Hospital v. NLRB*, 88 F.3d 1300, 1309 (3rd Cir. 1996) The single-facility presumption can be overcome by a showing of functional integration so substantial as to negate the separate identity of the single-facility unit. *Centurion Auto Transport,* 329 NLRB 394 (1999) The presumption can also be overcome in the health care industry by a showing that approval of a single-facility unit would increase the threat of disruptions to the continuity of patient care that Congress sought to prevent. *Manor Healthcare, supra*. at 225; *Mercywood Health Building*, 287 NLRB 1114, 1116 (1988), enf. denied on other grounds sub. nom. *NLRB v. Catherine McAuley Health Center*, 885 F.2d 341 (6th Cir. 1989)

The Employer here, as the party challenging the appropriateness of the single-facility unit, has the burden of rebutting this presumption. *AVI Foodsystems, Inc*., 328 NLRB 426, 429 (1999) In determining whether the challenging party has rebutted the presumption, the Board looks at the following factors: (1) geographic proximity; (2) skills and functions; (3) employment conditions; (4) administrative centralization; (5) managerial and supevisory control; (6) employee interchange; (7) functional integration; and (8) bargaining history. *Heartshare*, supra, at 471; *Hartford Hospital*, 318 NLRB 183, 191 (1995) For the reasons set forth below, I find that the Employer has not met its burden in rebutting the single-facility presumption and I find the petitioned-for unit appropriate.

A. Clayton Avenue Facility: Answer Line nurses

The Employer employs 62 RNs on the Answer Lines at the Clayton Avenue facility, which is approximately four blocks from the hospital. Of these 62 RNs, 59 are Answer Line staff nurses, 2 are Triage Coordinators, and 1 is a Quality Initiative Coordinator. In addition to the Answer Line nurses at issue here, the Clayton facility also houses the security department, which employs about 115 employees who provide security for the Employer and Barnes-Jewish Hospital, as well as the BJC Compensation and Benefits department, part of the BJC Information Systems department, part of the BJC accounting offices, and a day care center. The Clayton facility has its own parking, cafeteria, and time clock.

1. Geographic location

The Clayton facility, which is not owned by the Employer, is a discrete multi-story building. Parking lots and other buildings not owned or operated by the Employer physically separate the Clayton Avenue facility from the hospital. The Clayton facility is not physically connected to either of the other two offsite locations at Forest Park or Taylor Avenue.

2. Skills and functions

Staff RNs in the hospital assess a patient's condition, formulate a nursing diagnosis, develop an individual nursing plan of care, implement that plan of care, and assess the patient's response to that plan of care. Staff nurses who work in the hospital's emergency room also use a "triage" skill to determine what level of care a patient needs. The Employer argues that the Answer Line RNs perform the same assessment and "triage" functions as the RNs in the emergency room. Unlike the staff RNs at the hospital, though, the Answer Line RNs perform the "triage" functions by telephone. Telephone nursing is a unique subspecialty and Answer Line RNs are required to have 3 to 5 years experience. This experience is necessary because the Answer Line nurses are required to possess the ability to ask probing questions of the caregiver by telephone. While a few departments at the hospital also require some type of

experience, most staff RNs are not required to have any experience. The job description for a staff nurse position at the hospital does not contain any requirments for experience. Answer Line nurses are required to demonstrate excellent customer service skills, knowledge of resources, and utilization of documented protocols and equipment, including computers, telephones, and fax machines.

Answer Line RNs work in the Call Center at the Clayton facility and answer calls from the 454-KIDS telephone number, which is a community service, and the After Hours Service provided for 160 subscribing physicians who are located throughout a wide geographic area. The After Hours Service works with a physician's answering service, which service notifies the After Hours line to call the physician's patient or the patient's family to assess the situation. The Answer Line is staffed 24 hours a day, 7 days a week, with the After Hours Service shifts beginning at 5 p.m. Answer Line nurses are cross-trained on both 454-KIDS and the After Hours Service, and are separately scheduled for the 454-KIDS and the After Hours Service. Answer Line nurses do not currently perform any adult triage services which are now performed by employees of another BJC hospital. They also no longer register individuals for classes on the 454-KIDS line.

Calls on the 454-KIDS line are answered directly by the Answer Line nurses, who then obtain information on the child, such as demographics, age, medical history, allergies, and then ask questions about the child's symptoms. If the call is from the After Hours Service, the demographic information and the child's symptoms are entered into the computer by a support staff employee, and then the Answer Line nurses return the calls made to this service. Through the use of approximatley 500 written protocols, the Answer Line nurse determines whether the call is a "priority call" where the child should be taken immediately to the emergency room or the caregiver should call 911, an "emergent call" where the child should see a physician or be taken to an emergency room within the hour, an "urgent" call where the child should see a physician

within 24 hours, or an "interim care" call where the child may be treated at home. The Answer Line RNs may vary their recommendations from the protocols but must justify any deviation.

Answer Line nurses receive approximately 80,000 calls a year. The Employer's witness Ann Orsl, an Answer Line nurse, testified that 30 percent of the calls are either priority or emergent calls, and over 60 percent were urgent calls, meaning the child did not require immediate care. Orsl also testified that 20 percent of the callers are referred to an emergency room, and this could be an emergency room at different hospitals. Employer's Exhibit 112 shows that of the 80,000 calls, 14,653 of the callers in 2001 made either inpatient, outpatient, or ER visits to the hospital. Exhibit 112 also shows that 12,800 callers were *referred* to the hospital from January through October 2002, though this exhibit does not reflect what number of callers actually went to the hospital's ER.

The individuals who use the 454-KIDS or the After Hours Service lines are members of the community and do not have to be patients of the hospital. The individuals who call the Answer Line are not classified as patients by the Employer. Answer Line callers may also be referred to hospitals other than the Employer and to physicians who are not affiliated with the Employer.

Answer Line nurses may call other resources when responding to calls, such as Infection Control and the Family Resource Center located at the hospital, and outside community services, such as Poison Control. They notify the ER when a caller is coming in and may share patient information with the ER. This contact is by telephone, not in person, and the record does not reflect whether this contact with the ER is with staff nurses or other individuals who are not in the petitioned-for unit. Answer Line nurses do initiate "follow up" telephone calls to certain callers with children who have severe asthma sysmptons, to determine if the recommended breathing treatment is working. The record does not reflect whether the Answer Line nurses make follow-up calls to individuals who do not have asthma problems, or how

frequently Answer Line nurses make follow-up calls. Answer Line Supervisor Wells admited that the Answer Line nurses do not have occasion to go to the main hospital in performing their "triage" or Answer Line functions.

Eighty percent of the Answer Line nurse's time is spent handling calls, including triaging and documenting calls. The other 20 percent is spent in meetings, committees, and working on projects. When no calls are coming in, the Answer Line RNs may take care of personal matters as long as they remain ready to take calls. While the Employer presented evidence that a nurse clinician at the hospital in the outpatient epilepsy department also answers telephones as part of her duties, the record does not reflect what percentage of her time is spent on the telephone. This nurse clinician answers calls from patients' families regarding the patient's condition. The nurse clinician also has physical contact with the patients, while Answer Line nurses do not.

Because Answer Line nurses perform their assessment of a child soley over the telephone, they rely on information provided by a third party, the parent or caregiver, though occassionally, the Answer Line nurse may talk to the child or listen to the child's breathing over the telephone. Chief Executive Nurse Velinda Block specifically testified that Answer Line nurses must rely on the descriptions given by the adult caregiver and are unable "to use (their) eyesight or even (their) ears to assess that child." Staff nurses at the hospital perform both physical and visual assessments, in addition to obtaining information from the parent or caregiver. As part of a physical assessment of an asthma patient, for example, a staff nurse at the hospital in the emergency room would perform a visual inspection of the child, listen to the child's breathing, and monitor the child's oxygen level using a pulse oximeter, none of which are functions performed by the Answer Line nurse.

While Answer Line RNs can recommend that the caregiver administer certain treatments, or can recommend that the child be taken to a physician or to the emergency room for treatment, the staff nurses at the hospital can actually administer treatments directly to the

patient. Most of the hospital staff nurses work with patients who have been admitted to the hospital, who require bedside care, have a medical diagnosis, and have a written plan of care. Answer Line nurses do not work with patients and do not perform such tasks as administer medications, run tests, or insert IVs. Staff nurses also operate various equipment associated with physical patient care that is not required of an Answer Line RN. The services of the Answer Line nurse are not billed to the caller, while the patient is billed for the services of a staff nurse at the hospital. Because the Answer Line nurses do not physically assess a child, or perform treatments on a child, they do not use patient order sheets concerning the bedside treatment of patients, as do the staff nurses at the hospital. Answer Line nurses are also not subject to patient abandonment charges as are the staff nurses at the hospital, and are not included in the discussions the Chief Executive Nurse has with the staff nurses at the hospital on this issue.

Answer Line RNs are also not required to float to understaffed departments as part of their duties, as do the staff nurses at the hospital who work in the inpatient departments, which represents the majority of the staff nurses at the hospital. Answer Line RNs do not float to other departments because they are specifically trained to perform their duties, and because they are scheduled for specific shifts on the Answer Lines. Staff nurses at the hospital also do not float to the Answer Line at the Clayton facility, though they float to most of the departments within the hospital. The staff nurses who work in the float pool, whose job is to float where they are needed, receive orientation in departments within the hospital, but do not receive orienation in any of the departments at the three offsite locations, including the Answer Line at Clayton. Answer Line nurses are also not assigned temporarily to other departments that are short staffed. Staff nurses at the hospital, who are not “float” RNs, can be temporarily assigned to different departments within the hospital that are short staffed. Staff nurses at the hospital are never temporarily assigned to the Answer Line.

The two Triage Coordinators who also work at the Call Center at the Clayton facility are RNs and they work part-time. They spend approximately one-third of their time answering calls, and spend the remainder of their time assisting with "operational activities" such as helping a newly subscribing physician to the After Hours Service set up his office for the service, orienting staff, and acting as a liason to co-workers. They prepare schedules but do not prepare evaluations. The Triage Coordinators, like the Answer Line nurses, are hourly paid.

The Employer also employs one Quality Initiative (QI) Coordinator at the Call Center. She takes no phone calls but spends her time on quality initiatives, such as coordinating chart review, and examining call volume, productivity, and staffing. She reviews the Answer Line nurses' tapes but her reviews of these tapes do not affect the Answer Line RNs' performance appraisals. The Answer Line QI Coordinator works part-time. The minimum qualifications for this position, in addition to licensure, include a Bachelor's degree in Nursing and 5 to 7 years experience. The QI Coordinator has the same job grade, grade 29, as the QI Coordinators at the hospital.

3. Working conditions

Answer Line nurses do share some of the same terms and conditions of employment as the staff nurses at the hospital. They have the same benefit program, transfer procedure, grievance procedure, and rules of employee conduct. There are, however, significant differences in the daily working conditions between the Answer Line RNs and the staff nurses at the hospital. Answer Line nurses work at a physically separate facility. They have their own time clock, their own cafeteria, and their own employee parking. Most Answer Line nurses work specifically scheduled 8-hour shifts. Most of the RNs in the hospital work 12-hour shifts, with a few working 8-hour shifts to accommodate medical conditions, except for the nurses in the Pediatric Intensive Care Unit (PICU) who work both 12-hour and 8-hour shifts.

While Answer Line nurses are “on call” four shifts in a 6-week schedule during the busy winter season as are staff nurses, Answer Line nurses can work these “on call” shifts from home, while staff nurses cannot. Answer Line nurses can also perform 50 percent of their regular shifts at home, while staff nurses cannot. Currently, 23 of the 62 Answer Line nurses work a percentage of their shifts at home, and they are furnished with a computer and fax machine. Answer Line PRNs also have different requirements than those of staff nurses at the hospital. Answer Line PRNs must work a minimum of 30 hours in a 6-week schedule, while PRNs working at the main hospital are required to have 36 hours in a 4-week schedule, of which 12 hours must be worked on a weekend shift.

As noted above, Answer Line RNs are not required to float to other departments at the hospital. While Answer Line RNs wear the same badge as staff nurses, they are not required to wear uniforms. The vast majority of the staff RNs at the hospital are required to wear some type of uniform, including scrubs. Unlike the staff nurses, the Answer Line nurses perform their functions sitting at a desk in front of a computer and on the telephone.

Most significantly, Answer Line nurses do not have any physical contact with the patients, and therefore do not work with any patient care machinery, or risk exposure to blood or bodily fluids. Answer Line nurses are also allowed to work on other projects, including personal ones, while at the telephones. Answer Line nurses use computers to provide them with protocols on what questions to ask the caller and what treatments to proscribe. Staff RNs at the hospital do not use computers in making their assessments or for providing protocols.

4. Administrative centralization

Some centralization exists among the hospital and the three offsite facilities, including the Clayton facility. The BJC Employees Policy Manual, used by various hospitals in the BJC system, applies to all the Employer's employees. Thus, all the RNs are subject to the same policies on discipline, attendance, and sexual harassment. All employees are also subject to the BJC grievance procedure. All nurses, including Answer Line nurses, are classified as staff nurses and have the same job grade of S-50 which is the same designation used throughout the BJC system for staff nurses. The wage rate ranges are the same for all staff nurses, including Answer Line nurses. Answer Line nurses receive the same shift differentials and "off cycle" wage increases, which are increases separate from the annual merit increases. All the Employer's RNs, plus the RNs at Barnes-Jewish Hospital, another BJC employer, have the same payday.

All the Employer's RNs receive the same benefits, which are the same as those received by employees at other BJC hospitals. Employees who worked for the Employer prior to the Employer's merger with BJC in 1994 were "grandfathered" into certain shift differentials, and some pre-merger employees were also "grandfathered" in with higher benefits. RNs may keep these grandfathered benefits as long as they remain employed by the Employer and do not transfer to other BJC hospitals. In 2000, 45 percent of the Employer's RNs had grandfathered benefits. The record does not reflect how many of the 932 staff nurses working at the four locations receive these "grandfathered" benefits. Answer Line nurses also have a unique benefit offered in their department whereby they receive certain bonus points for working undesirable shifts. They receive $17.50 for each point they earn. Answer Line Supervisor Wells has the discretion to create these unique bonus programs for the Answer Line department.

The Human Resources department participates in the hiring process of RNs at all the Employer's locations. The individual department managers initiate the hiring process by completing a BJC employment requisition form. The Human Resources office then posts the position throughout the BJC system and, if necessary, advertises the position. Job postings are posted at the hospital as well as at the Forest Park and Clayton facilities. All applicants complete the same BJC employment form which is processed at the Forest Park facility. While the Human Resources department interviews applicants and makes recommendations on hiring, the department manager also interviews the applicant and makes the ultimate decision with respect to hiring. When hired, all RNs are required to attend a 2-day general orientation. Many of the different departments, however, including the Answer Line department, conduct their own unit-specific orientation. The orientation for the Answer Line is 8 weeks.

RNs may transfer from one Employer location to another, or from one Employer location to another BJC location, by completing a BJC transfer form. An employee who transfers and has already attended the 2-day general orientation is not required to repeat that general orientation but will be required to pariticipate in orientation specific to the unit in which the employee will be working. Transferring employees do not lose "hospital" seniority as long as the individual remains employed by the Employer. Transferring employees do not retain "unit" seniority when transferring, which is used to determine shift scheduling within the different departments. Also, employees who request transfers must go through the same interview process as new employees. The employees who transfer to the Answer Line are interviewed by the local Answer Line management.

Local managers and vice-presidents responsible for the offsite locations, including the Clayton facility, retain significant autonomy. All RNs receive performance appraisals on a BJC form entitled "BJC Performance Appraisal Year." The Answer Line supervisor, however, prepares the appraisals and determines what merit wage increase each employee in the

department will receive. While Answer Line nurses are subject to the same disciplinary policies as the hospital RNs, the department supervisor or manager initiates and signs disciplinary action forms.

While the Employer has one overall budget, the budget is broken down into separate budgets for each department that address all expenses of that department, including wages and benefits. The managers at the Call Center can make their own determinations with respect to how to spend the money in the Call Center's budget. The managers can use the money to create their own bonus programs, including a point system devised by the Answer Line supervisor to reward employees who work undersirable shifts. Answer Line nurses are paid out of the Pediatric Service Development budget, which is not the same pool of money out of which the staff nurses at the hospital are paid. The Answer Line managers also schedule their own employees. The staffing needs of the offsite locations are not discussed or addressed at the hospital staffing meetings.

5. Management and supervision

Answer Line nurses have separate supervision and management. The vast majority of the staff nurses at the hospital report to department managers who in turn report to Vice-President of Family & Children Services Velinda Block, who is also the Chief Executive Nurse. The Answer Line nurses, including the two Triage Coordinators and the Quality Initiative Coordinator, report to an onsite supervisor, Suzy Wells, who reports to an onsite manager, Julie Bruns. Both Wells and Bruns report to Vice-President of Pediatric Services Development Todd Sklamberg. These local supervisors and managers do not have any supervisory authority over the staff nurses at the hospital. While Chief Executive Nurse Velinda Block observes the work of the Answer Line nurses for a few hours 1 day a year, Answer Line supervisor Wells admitted that none of the supervisors at the hospital, which includes Velinda Block, have any supervisory authority over the Answer Line nurses.

Interviewing and hiring decisions are made locally by the department supervisor or manager. Manager Bruns disciplines the Answer Line nurses. Local management also evaluates employees and determines the merit wage increases for each Answer Line RN. Local management sets work schedules. Employer-wide seniority plays no role in the scheduling of Answer Line nurses. Rather, scheduling and shift preferences are determined by department seniority. Finally, the fact that the hospital and the Answer Line are covered by the same grievance procedure is not significant, since the first three levels of the procedure involve local Answer Line management who have the authority to resolve these grievances without intervention from hospital management.

6. Employee interchange

Answer Line nurses do not need to go to the hospital to perform their telephone triage functions, nor do the staff nurses at the hospital have to come to the Clayton facility to perform their duties for their patients. As already noted, Answer Line nurses do not float to the hospital, nor do the staff nurses at the hospital float to the Answer Line. There are no temporary transfers between the staff nurses at the hospital and the Answer Line nurses. There were 250 total transfers from January 1998 through May 2000, and approximately the same number of transfers during the 2-year period from January 2001 through November 2002. These 250 transfers represent transfers between units within the hospital, and transfers between the hospital and the offsite locations. Employer's Exhibit 111[4] reflected only 13 transfers involving Answer Line nurses in the almost 5-year period from January 1998 through November 2002. Of these 13, only 5 have occurred in the last 2 years: 3 Answer Line employees transferred from the Answer Line to the hospital, and 2 staff nurses transferred from the hospital to the Answer

[4] While Exhibit 111 states that it is only a "sampling" of transfers, Answer Line Supervisor Wells clarified that this document represented *all* the transfers involving Answer Line nurses during this time period.

Line. This number is insignificant considering that the 5 transfers occurred in over a 2-year period and given that approximatley 850 nurses work at the hospital and 62 nurses work at Clayton, for a total of 912 employees. Thus, the vast majority of the 250 transfers which occur in a 2-year period occur between units *within* the hospital facility.

While Answer Line nurses have "access" to the cafeteria, pharmacy, and gift shop at the main hospital; to a fitness center at the Taylor facility; and to a day care center at the Clayton location, the record fails to reflect the extent to which the Answer Line nurses avail themselves of this access. Answer Line nurses are invited to the hospital appreciation week activities, though the record fails to reflect the level of participation by Answer Line nurses at activities occuring at the hospital for this event.

Answer Line nurses do have some contact with other nurses at the hospital and the other offsite locations through classes and participation on councils or committees. However, most of the meetings occur within each department. There are hospital-wide meetings, but participation on the various committees is strictly voluntary and not required as part of the Answer Line nurses' job functions. In addition, only a few Answer Line nurses attend such meetings. Four nonsupervisory Answer Line employees have participated in council meetings. One of these four, Judy Ward, attends various council meetings about once a month. The record does not reflect how often the other three Answer Line nurses actually attend council meetings. Judy Ward also participates in monthly meetings of the Teaching Tool Steering committee. One Answer Line nurse, Ms. Costello, has participated on a perceptor (mentoring) task force, though the record does not reflect how frequently this task force meets.

Answer Line nurses have also participated in focus groups which meet a few times each year. The record reflects that two of the current Answer Line nurses attended focus meetings. Answer Line nurse Losito attended one meeting in 2000, and one in 2001. Answer Line nurse Leonard atended one meeting in 2001.

The parties stipulated that Answer Line nurses attend educational classes, including CPR training, and quality initiative classes with staff nurses from the hospital and the other two offsite locations. The record discloses that attendance at these educational classes does not occur on a daily or even a weekly basis. Answer Line nurses are only required to take CPR classes once every 2 years. With respect to the other classes, Employer's Exhibit 89 reflects that the Answer Line nurses attended an average of two classes in 2002 and four classes in 2001.

Five of the 62 Answer Line nurses also work PRN shifts in departments at the hospital. These five Answer Line nurses do not work at the hospital as part of their Answer Line function, but rather as part of their separate duties as staff nurses in those departments. Four other Answer Line RNs work PRN hours in departments at offsite locations, but not at the hospital. One staff nurse who works primarily at the hospital, and two staff nurses who work primarily at offsite locations, also work either per diem or PRN hours at the Answer Line. Again, these staff nurses do not perform Answer Line work as part of their staff nurse duties at the hospital, but as a separate, second job position with different duties.

7. Functional integration

As previously noted, the answer line nurses perform functions that are different from that of the staff nurses at the hospital, and the Answer Line nurses do not perform any of their functions at the hospital. Staff nurses and Answer Line nurses perform their duties independently at each location, and all day-to-day labor matters are administered within the separate locations, though under guidelines established by BJC. The fact that the Answer Line nurses' functions are not integrated into those of the staff nurses at the hospital is reflected by the fact that staff nurses do not float to the Answer Line, nor do Answer Line nurses float to the hospital. Further, the staffing and scheduling of nurses at the Answer Line and the hospital are done independently of each other. No one from the Answer Line department attends the

hospital staffing meetings, nor are the staffing needs of the three offsite locations discussed at the hospital staffing meetings.

While the Answer Line nurses have the same job classification and same job grade as the staff nurses, this does not establish that they are "functionally integrated", nor does the fact that they periodically refer callers to other areas of the hospital, including the ER, Poison Control Center, and Family Resource Center. Similarly, the fact that Answer Line nurses attend classes with nurses from the hospital does not establish that their job functions are so integrated that the staff nurses at the hospital have lost their separate identity.

8. Bargaining history

There is no history of bargaining among any of the Employer's employees. This Region issued a prior decision in Case 14-RC-12170, in which I found the identical petitioned-for unit of RNs at the hospital to be an appropriate single-facility unit. The Petitioner in that case withdrew its petition prior to an election.

Analysis

I conclude that the record evidence in this case is not sufficient to rebut the presumption that a single-facility unit is appropriate for the purposes of collective bargaining. Answer Line nurses here work at a "single facility". They perform their Answer Line functions at a physically separate facility not owned by the Employer, located four blocks from the hospital. The Board has found facilities closer in proximity than the hospital and the Clayton facility to constititue "single-facility" units. See, e.g., *Visiting Nurses Assn. Of Central Illinois*, 324 NLRB 55, 57 (1997); *Passavant Retirement and Health Center*, 313 NLRB 1216, 1218 (1994)

The Employer repeatedly cites *NLRB v. Catherine McAuley Health Center*, 885 F.2d 341 (6th Cir. 1989) for the proposition that the Employer's four separate facilities should constitute "one facility", and therefore the single-facility presumption should not be applicable to the facts of this case. *NLRB v. Catherine McAuley Health Center* is not dispositive of the issues here.

This Sixth Circuit decision has not been relied upon by the Board, nor does the Employer offer any evidence that it has been adopted or relied upon by the Eighth Circuit, which is the circuit applicable to this Employer. Moreover, this case was decided before the Board's health care unit rules were established, and to the extent it relies on the Second Circuit's opinion in *Long Island Jewish-Hillside Medical Center v. NLRB*, 685 F.2d 28, 34 (2d Cir. 1982), which held that the "single-facilitiy presumption is inapplicable in the health care context", it was overruled. Finally, *Catherine McAuley Health Center* is distinguishable because, unlike the present case, there was a significant amount of employee interchange among the facilities.

The Employer presented some evidence that the Answer Line nurses may eventually be moved back to the hospital once various construction projects are completed. Such construction projects are only in the "design" phase and are expected to take 3 to 4 years to complete. The determination of whether to exclude employees from the bargaining unit must be based on facts as they exist at the time of the hearing and, therefore, the Employer has failed to establish geographic proximity at the present time. *Presbyterian Hospital*, 285 NLRB 935 (1987)

While Answer Line nurses at the Clayton facility are subject to the same personnel policies as hospital staff nurses, these policies are BJC policies not limited to the Employer. Sharing corporate personnel policies does not mandate a finding that a single-facility unit is inappropriate. *RB Associates*, 324 NLRB 874 (1997) See also *AVI Foodsystems, Inc.,* 328 NLRB 426 (1999) Patient care operates independently at each facility, and, as detailed more fully below, all day-to-day labor matters are administered within the separate facilities.

Many of the Employer's administrative functions have been centralized, including recruitment and human resources. Wages, benefits, and disciplinary procedures are uniform among the RNs throughout the locations. The Board has made clear, however, that even where several facilities are physically close together and operated under administrative centralization,

with uniform policies for all employees, such would not suffice to refute the single facility presumption in the heatlh care field. *Gerry Homes d/b/a Heritage Park Health Care Center,* 324 NLRB 447, 452 (1997) citing *Manor Healthcare Corp*., supra.

Further, despite this centralization, the offsite locations, including the Clayton facility, retain local autonomy. Answer Line staff nurses report to an onsite manager. This manager controls the work schedules and choice of shifts, interviews all job applicants, makes the ultimate hiring decisions, prepares performance appraisals, determines the amount of merit increases, and signs disciplinary actions. Similarly, the Answer Line manager, the Answer Line vice-president, and the vice-president of Pediatric Services Development have the authority to resolve grievances as part of the first three steps of the grievance resolution procedure. The Answer Line manager and vice-president determine how the department budget will be spent, including using the money to create bonus programs for the department. Thus, the Answer Line manager and vice-president of Pediatric Services Development retain significant authority over the Answer Line nurses. The presence of local control is a decisive factor and overcomes even strong evidence of centralization. *RB Associates*, supra

There is little recent interchange between Answer Line nurses and staff nurses at the hospital. Answer Line nurses do not float to other departments in the hospital, nor do hospital staff nurses float to the Answer Line. There are no temporary transfers between the Answer Line RNs and the hospital staff nurses, nor have there been any involuntary transfers. There have been only five permanent transfers involving Answer Line nurses since May 2000. This number is insignificant when compared to the total number of employees at the hospital and the Clayton facility of approximately 912 RNs. See, e.g. *J & L. Plate, Inc*., 310 NLRB 429, 430 (1993) (21 permanent transfers and 20 temporary transfers in 3 years is not significant given the total number of employees at both facilities of 183). Permanent transfers are generally a less significant indication of employee interchange than temporary transfers. *Deaconess Medical*

Center, 314 NLRB 677 fn.1 (1994); *Red Lobster*, 300 NLRB 908, 911 (1990) The signficance of these relatively few permanent transfers is further diminished by the fact that they were voluntary. *id*.

While some of the Answer Line nurses do participate in council meetings, the number of Answer Line nurses participating was small and attendance was voluntary and not a required job function. As to classes attended with other nurses, Answer Line nurses attended only an average of two classes in 2002, and four in 2001. This lack of interchange between Answer Line nurses and the hospital nurses is of far greater significance than the fact that both facilities are located on the same "campus." *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994) Having common in-services or educational classes, shared social events, and a single handbook do not outweigh the other evidence set forth above showing that the main hospital's separate indentity has not been negated. *Staten Island University Hospital*, 308 NLRB 58, 61 (1992) Similarly, perfunctory exchanges of information, such as that given by the Answer Line nurses to the hospital staff in the ER when referring a caller, and periodic contact among Answer Line nurses and staff nurses at the hospital in committees, evidences neither a significant functional interdependence nor a close and continuous working relationship. See *Milwaukee Children's Hospital Assoc.,* 255 NLRB 1009, 1012 (1981)

The cases cited by the Employer are distinguishable from the facts here. In *West Jersey Health Systems,* 293 NLRB 749, 750 (1989), the Board found four acute facilities to be an appropriate unit because there were 147 permanent transfers and the regular rotation of 250 other employees between the four facilities within 14 months. The Board found this number of permanent and temporary transfers to be significant. *id*. at 751. The Board also found it significant that the employees who transferred to different departments or units could exercise bumping rights. *id*. There is no evidence that transferees in this case can exercise bumping rights. Rather, they must follow the same interview process as new employees. In the present

case, there have been only five transfers involving Answer Line nurses in the 30 months since May 2000. Unlike *West Jersey*, there were no temporary transfers between the facilities.

Another case cited by the Employer, *Saints Mary and Elizabeth Hospital*, 282 NLRB 73 (1986), is not instructive here and does not compel the inclusion of the Answer Line nurses. This case involved Section 8(a)(5) unfair labor practice allegations concerning an established bargaining unit that already included "triage nurses". Similarly, *Milwaukee Children's Hospital Assoc.*, supra, also cited by the Employer, is inopposite, as the petitioner in that case sought a multi-facility unit of RNs and the Employer was seeking to include professionals in this RN unit. Thus, the Board was not faced in either case with multi-facility versus single-facility issues.

Accordingly, based on this lack of significant interchange, separate supervision, and the dissimilarity in functions and working conditions detailed above, I find that the Employer has not rebutted the single-facility presumption and I shall exclude the Answer Line nurses at the Clayton facility from the unit. *Visiting Nurses*, supra; *Staten Island University Hospital,* 308 NLRB 58 (1992) Further, given the differences in the care provided by the Answer Line nurses and the nurses at the hospital, and that Answer Line nurses work independently of the hospital nurses, any potential work stoppage at the hospital would have little effect on the Answer Line nurses. To the extent that Answer Line nurses may also be separately employed as PRN or per diem staff nurses at the hospital, they will be eligible to vote on that basis if they meet the eligibility criteria.

B. Forest Park facility: Mobile Van RNs, Physician Services RNs, Child Advocacy RNs, Community Health RNs, and Nurse Recruiters

The Forest Park building is a discrete, multi-story facility located four blocks from the hospital. It has its own parking, time clock, and cafeteria. The Employer employs six Mobile Van RNs, two Physician Services RNs, three Child Advocacy RNs, one Community Health RN, and five Nurse Recruiters at the Forest Park facility, all of whom the Employer contends should

be included in the unit. There are 18 Human Resources employees who work at this facility, including the 5 nurse recruiters. None of the employees who work at this location are required to wear uniforms. The RNs at the Forest Park facility, except for the nurse recruiters, report to department managers, who in turn report to the vice-president of Pediatric Service Development. The nurse recruiters report to the director of Human Resources. I have concluded, for the reasons set forth below, that the RNs who work at this offsite location are appropriately excluded from the unit. To the extent that RNs at this location may also be separately employed as PRN or per diem staff nurses at the hospital, they will be eligible to vote on that basis if they meet the eligibility requirement.

1. Mobile Van

The Employer operates two Mobile Health Vans. These Mobile Health Vans are also referred to as the "Healthy Kids Express". Three staff nurses, one nurse practitioner, and two Pediatric Mobile Health Coordinators work in the Mobile Vans unit. Unlike the hospital staff nurses, the Mobile Van RNs provide more primary care than acute care. The Mobile Van provides free services to the community, including dental, auditory, vision and lead screenings, immunizations, and nutritional and fitness education. In addition to these services, the Mobile Van RNs also make referrals to physicians. The two Coordinators help provide these services to the community. They also operate the vans if drivers are not available, which is not a skill required of the hospital staff nurses. The Coordinators collaborate with school nurses, primary care providers, and community site liasons. Mobile Van nurses also collaborate with Child Advocacy RNs, another department at the Forest Park facility, on such projects as checking the safety of car seats and building safe playgrounds. They also collaborate with RNs from the surgical unit at the hospital on the annual drive to promote timely checks of smoke detector batteries. The record does not reflect how many hospital RNs are involved in this annual promotion of safe use of smoke detectors.

With respect to employee interchange, Mobile Van RNs do not float to other areas of the hospital, nor do staff nurses at the hospital float to the Mobile Van unit. Two of the RNs in the Mobile Van unit voluntarily transferred to this unit from other departments at the hospital, with one transfer occuring in 2001 and one in 2002. One Mobile Van RN works primarily at the Mobile Van unit and also works PRN hours at the Answer Line, an offsite unit at the Clayton facility. There have been no temporary transfers between the nurses at Forest Park and the staff nurses at the hospital.

Employer's Exhibits 99 and 107 reflect that there were no Mobile Van employees present at the Teaching Tool Steering Committee, or any of the Nursing Council meetings. One Mobile Van employee, Lisa Meadows, attended two Clinical Practice and Research meetings, but these were in January and February 2001, *prior* to Meadows' transfer to the Mobile Van unit and at a time when she was still a staff nurse at the hospital. With respect to educational classes, Lisa Meadows only attended one class in 2002 after transferring to the Mobile Van unit. The other three Mobile Van employees attended an average of three classes in 2001 and three classes in 2002. The RNs working in the Mobile Van unit, however, spend the majority of their time traveling to other locations and hence have little opportunity for regular interchange with staff nurses at the hospital.

There is little similarity between the working conditions of the Mobile Van employees and those of the staff nurses in the hospital. As noted above, the Mobile Van employees spend the majority of their time away from the hospital and traveling in mobile vans. They do not wear uniforms, punch a different time clock, and have their own cafeteria. Mobile Van nurses are not required to float to understaffed departments as are the majority of the hospital staff nurses. The Mobile Van RNs perform primary care, while the staff nurses at the hospital perform acute care.

Mobile Van employees are subject to the same BJC policies as the other staff nurses, and receive the same wages and benefits. They have the same grievance procedure and the same disciplinary and appraisal policies. However, Mobile Van employees are separately supervised by the director of the Community Health Outreach department, who reports to Vice-President of Pediatric Services Development Todd Sklamberg and not to Chief Executive Nurse Velinda Block. These onsite supervisors are involved in the first steps of the grievance procedure, and they make hiring decisions for this department as well as deciding merit increases and issuing discipline. Because of the geographic separation, lack of significant interchange, different working conditions, and separate supervision by individuals who exercise significant local control over the Mobile Van RNs, I find that these RNs do not share a sufficiently strong community of interest with the hospital staff nurses to overcome the presumption of a single-facility unit. Therefore, I shall exclude the Mobile Van nurses from the unit of hospital staff nurses found appropriate here.

2. Physician Services

The Employer employs two RNs in the Physician Services department. One is a Nurse Coordinator, whose prior job title was Outreach Coordinator, and the other is a Physician Service Coordinator, whose prior job title was Physician Liaison. Both of these individuals transferred to these positions from departments at the hospital. One transferred in 1996 and the other in 1997. Again, these transfers were voluntary and not required by the Employer. These RNs do not float to other departments either at the hospital or at the other offsite locations, nor do staff nurses from the hospital or other locations float to Forest Park. Neither of the two RNs report to Chief Executive Nurse Velinda Block. The Nurse Coordinator reports to the director of the Health Professional Marketing department who in turn reports to Vice-President of Pediatric Services Development Todd Sklamberg. The Physician Service

Coordinator reports to the director of the Physician and Medical Staff Services, who also reports to Todd Sklamberg.

The Physician Service Coordinator has an office at the Forest Park building, and the Nurse Coordinator has an office at the hospital. These two nurses work with physicians and families to provide education. The Nurse Coordinator provides education to the entire hospital staff and to the community. She interacts with the staff RNs at the hospital through instructing Pediatric Advanced Life Support, Basic Life Support, and trauma training, which are educational programs that staff nurses, physicians, and other employees attend. The Nurse Coordinator is at the hospital 40 to 50 percent of her time, and the rest of the time is spent out in the community training members of the community and health care providers. The record does not reflect what the Nurse Coordinator does while she is at the hospital, other than coordinating the educational programs discussed above. When the Nurse Coordinator works at the hospital, she has access to the same cafeteria and social events that staff nurses have, though the record does not reflect whether the Nurse Coordinator has ever used the hospital cafeteria or participated in any hospital social events.

The Nurse Coordinator's job description indicates that she coordinates programs for the hospital and community approximately 40 percent of her time. She collaborates with referring hospitals 30 percent of her time, collaborates with emergency medical systems departments 20 percent of the time, and documents her marketing activities and sales reports 5 percent of her time. The Nurse Coordinator does not perform direct patient care and is not exposed to blood or bodily fluids. She does not provide bedside care, take vital signs, administer medications or treatments, or administer any medical procedures to patients, nor does the record reflect that she has to operate any patient care machinery.

The purpose of the Physician Service Coordinator is to maintain and strengthen relationships between the Employer and referring physicians. The job description for this

position indicates that the Physician Service Coordinator spends approximately 45 percent of her time "relationship building" with community physicians, nurses, and hospitals in the area and identifying market opportunities. The Coordinator also spends approximately 25 percent of her time "executing pediatric initiatives", which are identified as continuing medical education, entertaining physicians, teleconferencing, and coordinating the activities with other BJC institutions. This RN may talk to hospital staff nurses if they receive complaints from physicians about the care given to certain patients, by calling the staff RN to determine what is occuring with that patient. The record does not reflect how frequently this contact occurs. The Physician Service Coordinator participates in continuing education programs with staff nurses. She also participates in training and social functions with the hospital staff nurses, such as the annual nurses' appreciation week, though the record fails to indicate how frequently the Physician Service Coordinator actually participates in these functions. The Physician Service Coordinator, like the Nurse Coordinator, does not perform direct patient care and is not exposed to blood or bodily fluids.

I find that the Employer has not met its burden of proof with respect to demonstrating that these individuals share such a community of interest with the staff nurses at the hospital so as to require their inclusion in the unit. As the job descriptions for these two Coordinators demonstrate, the job duties of these two positions do not occur within the main hospital building but are directed toward building referral networks. The skills and functions of these two positions are significantly different than those of the staff RNs at the hospital, as they do not provide direct patient care but promote the hospital through marketing. Working conditions are also dissimiliar in that these individuals do not work with patients and are not exposed to blood or bodily fluids. The record does not reflect what hours these employees work.

Both Coordinators work primarily with outside physicians, EMS departments, and referring hospitals, rather than with staff nurses at the hospital. Both Coordinators are

separately supervised by individuals who exercise significant control over the Coordinators. As these RNs report to a different vice-president, they are under a separate budget and are paid out of a pool of money not used to pay the wages of staff nurses at the hospital. There is no evidence of functional integration. The record fails to reflect that the primary duties of patient care carried out by the staff nurses at the hospital is dependent upon the functions of these two Coordinators whose primary concern is with outside physicians. Employer's Exhibit 100 reflects that the Physician Service Coordinator attended four classes in 2001 and no classes in 2002, and that the Nurse Coordinator attended two classes in 2001 and no classes in 2002. This minimal class attendance does not demonstrate functional integration, nor does it demonstrate a significant interchange among the Coordinators and the hospital staff nurses.

While the Nurse Coordinator and the Physician Service Coordinator have the same handbook and are under the same policies as the other staff nurses, these policies are BJC policies that apply to other hospitals as well as to the Employer. As noted above, sharing corporate personnel policies does not mandate a finding that a single-facility unit is inappropriate. *RB Associates*, supra. The presence of local control by separate supervision is a decisive factor and outweighs the evidence of centralization. *id*. The Nurse Coordinator and the Physician Service Coordinator have significantly different supervision, skills and functions, and working conditions than the staff RNs at the hospital, and have only limited employee interchange and contact. Accordingly, I shall exclude the Nurse Coordinator and the Physician Service Coordinator from the unit found appropriate here.

3. Child Advocacy

The Child & Family Advocacy department consists of three RNS, two of whom are Injury Prevention Program Coordinators, and one of whom is a staff nurse. Two of these individuals came to this department from departments at the hospital, with one transferring to Child Advocacy in 2002 and the other in 2000. Both transfers were voluntary and not mandated by

the Employer. As with the other offsite RNs, these RNs do not float to other departments in the hospital, nor do hospital staff nurse float to the Forest Park facility. There are no temporary transfers between the hospital and the Child & Family Advocacy department at the Forest Park facility.

The Injury Prevention Coordinators and the staff nurse work with the community to develop services to prevent injury to children and to educate the community, including other health care providers, about preventing children's injuries. The Injury Prevention Coordinators utilize staff nurses, physicians, and other health care providers for work in the community. Some of the community projects include building safe playgrounds for the inner city schools. Some of the hospital's ER staff have been involved in the playground project.

The Injury Prevention Coordinators and staff nurse are subject to the same administrative policies as the staff nurses at the hospital. The Injury Prevention Coordinators and the staff nurse spend 40 percent of their time in contact with other departments and staff. The record does not reflect how much of this time is actually spent at the hospital, or how much time is spent in contact with the staff nurses at the hospital as opposed to other hospital staff. Employer's Exhibits 99 and 107 reflect that no Child Advocacy nurses participated in any of the nursing committee meetings, or the Teaching Tool Steering committee, nor have any of them attended any of the focus group meetings. Employer's Exhibit 101 reflects that Child Advocacy nurse Angela Kloche attended only two classes in 2002 after her transfer to this unit in January 2002. RN Kelly Klasek attended only one class in 2001 and one class in 2002. The third Child Advocacy nurse, Katherine Hammer, attended only two classes in 2001 and one in 2002. Again, this minimal class attendance does not establish functional integration or significant employee interchange.

The Injury Prevention Coordinators and the staff nurse do not perform direct patient care. They do not take vital signs, assess a patient's condition, administer medicines or other

medical treatments, draw blood, chart a patient's progress, nor are they exposed to blood or other bodily fluids, as are the staff nurses at the hospital. Nurses in the Child & Family Advocacy department do not report to the Chief Executive Nurse, but rather have separate supervision. They report to Child & Family Advocacy Director Nancy Litzinger, who reports to Vice-President of Pediatric Services Development Todd Sklamberg. As previously noted, this vice-president has significant control over the departments located at the Forest Park facility, including control of a separate budget. This vice-president and other Forest Park supervsors and managers determine the amount of merit increases the nurses will receive and have the authority to resolve grievances at the first few levels of the grievance procedure.

I find that the Employer has failed to meet its burden of establishing that these Child & Family Advocacy nurses share such a strong community of interest with the staff nurses at the hospital so as to overcome the single-facility presumption. The Child & Family Advocacy employees have different skills and functions, different working conditions, work in a separate geographic location, have separate supervision, and have minimal contact or interchange with the staff nurses at the hospital. While the Child & Family Advocacy nurses do attended some classes with the staff nurses at other locations, the record reflects they attend only a very limited number of classes on a yearly basis. Child & Family Advocacy nurses do not float to other departments, nor are they temporarily transferred to other departments or assigned to work in other departments. Therefore, I find that the Child & Family Advocacy nurses are appropriately excluded from the petitioned-for single-facility unit.

4. Community Health

The Community Health department located at Forest Park consists of a single nurse practitioner. This individual has an office at Forest Park but spends the majority of her time out in the community. The Community Health nurse practitioner works primarily with teenage mothers and their babies, and spends her time at the homes of the teenage mothers. The

nurse practioner provides education on nutritional needs, growth and development, and provides referrals to primary care physicians if necessary. The teenage mothers and their babies do not have to be patients of the hospital.

The Community Health nurse practitioner is subject to the same administrative policies as all the Employer's employees and has the same licensing requirements as the staff nurses at the hospital. The nurse practitioner, however, is separately supervised. She does not report to the Chief Executive Nurse, but reports to an onsite supervisor who reports to the vice-president of Pediatric Services Development. The nurse practitioner does not float to other departments at the hospital, nor do any of the hospital staff nurses float to the Community Health department. There is no evidence of any permanent or temporary transfers between the hospital and the Community Health department at Forest Park. Employer's Exhibit 105 shows the nurse practitioner attended two classes in 2002 and none in 2001.

The Employer has failed to meet its burden in establishing that the Community Health department shares such a strong community of interest with the staff nurses at the hospital as to make the single-facility unit inappropriate. The record reflects that the nurse practitioner has different skills and functions than the staff nurses at the hospital. The nurse practitioner is concerned with a particular segment of the community, teenage mothers and their babies, and these duties are not carried out at the hospital, or in close proximity to the hospital. The nurse practitioner has different working conditions in that she works primarily in the community in the homes of the teenage mothers, while staff nurses at the hospital do not. The nurse practitioner is also separately supervised and under the immediate control of onsite management. Other than the periodic classes taken with other staff RNs, the record fails to reflect any regular contact between the nurse practitioner, who spends most of her time in the community, and the RNs working at the hospital. Thus, the Community Health nurse practitioner is properly excluded from the petitioned-for unit.

5. Nurse Recruiters

The Employer employs one full-time Nurse Recruiter and four PRN Nurse Recruiters in the Human Resources department at its Forest Park facility. Three of the four PRN Nurse Recruiters work their primary jobs in other departments at the hospital, and one of the four works primarily in the Child & Family Advocacy department which is also located at Forest Park. The PRN Nurse Recruiters do not work at the hospital in their capacity as Nurse Recruiters, nor do the PRN Nurse Recruiters work at the Forest Park facility in their capacity as staff nurses. The full-time Nurse Recruiter, Cindy Fife, is also referred to as a senior Nurse Recruiter and is required to have an RN license. Fife's previous title in the last hearing was senior human resources consultant, which was changed to senior Nurse Recruiter in 2001. Cindy Fife also works PRN hours at the Answer Line, located at the Clayton facility. The record does not reflect the pay grade of the senior Nurse Recruiter, or the hours she or the other Nurse Recruiters work. Nurse Recruiters report to Bob Buer, the director of Human Resources, who reports directly to the president of the hospital.

The senior Nurse Recruiter takes employment applications for RN positions throughout the hospital and the offsite locations, and puts the applicants in contact with the department managers who will be interviewing them. She spends the majority of her time away from the hospital and the offsite locations at recruitment fairs. The four PRN Recruiters fill in when the senior recruiter is away so that someone is always available to take employment applications and to schedule interviews between the applicant and the appropriate department manager. The senior Nurse Recruiter is responsible for the coordination of the recruitment activities for the RNs. The senior Nurse Recruiter also participates in various socials for nursing students from different schools of nursing that are held at the hospital, and attempts to recruit them upon their graduation. These nursing students are not employees of the Employer. Nurse Recruiters

in Human Resources do not have contact with patients at the hospital, nor do they engage in patient care activities as do the staff nurses at the hospital.

There have been no temporary or permanent transfers between the Nurse Recruiters and the staff nurses at the hospital. Nurse Recruiters do not float to the hospital, and hospital staff nurses do not float to the Forest Park facility. Employer's Exhibit 106 shows the senior Nurse Recruiter, Cindy Fife, attended seven classes in 2001 and only one in 2002, which does not establish regular, frequent interchange between Nurse Recruiters and the staff nurses at the hospital.

The Employer has again failed to rebut the single-faciltity presumption. Nurse Recruiters work in a physically separate building which has its own time clock, cafeteria, and parking. The senior Nurse Recruiter spends most of her time working away from all of the Employer's locations. Nurse Recruiters are not required to wear uniforms, and they do not perform any patient care, nor do they operate patient care equipment. While Nurse Recruiters have contact with job applicants and with the department managers who will be interviewing these applicants, there is no evidence of interchange between the Nurse Recruiters and the staff nurses at the hospital. Accordingly, I will exclude the Nurse Recruiters from the single-facility unit found appropriate here.

C. Taylor Avenue Facility: Organizational Improvement RNs, Health Promotion and Education RNs, and Nursing Education and Research RNs

The Taylor Avenue location is a discrete, multi-story building physically separated from the hospital. The Taylor Avenue facility does not have a cafeteria, but it does have its own time clock and employee parking. Employees at this location are not required to wear uniforms. The Employer employs three Organization Improvement RNs, two Health Promotion and Education RNs, and two Nursing Education and Research RNs at this facility. In addition to these RNs, the Taylor building also includes the BJC Fitness Center, BJC legal offices, and other

departments. I have concluded, for the reasons set forth below, that the RNs who work at this offsite location are appropriately excluded from the unit. To the extent the RNs at this location may also be separately employed at the hospital as PRN or per diem nurses, they will be eligible to vote on that basis if they meet the eligibility requirement.

1. Organization Improvement

The Employer employs two Quality Improvement (QI) Consultants and one QI staff nurse RN in this department, which was formely known as the Quality Improvement department. One of the (QI) Consultants previously worked in a department at the hospital, though the record does not reflect the date she transferred to the Organizational Improvement department. The QI staff nurse previously worked in the PACU department at the hospital and transferred to Organizational Improvement in 1997. This QI staff nurse continues to work PRN hours in the PACU department. The QI nurses help perpare for “quality initiatives” and regulatory reviews, and facilitate both clinical and non-clinical quality projects.

The QI nurses educate “hospital staff” on the qualilty process. These nurses also participate in integrated service programs “shared . . . by RNs”, including the Wait and Waste program. QI nurses work with multi-disciplinary teams in various departments. The Chief Executive Nurse, to whom these nurses do not report, estimated that the QI nurses spend approximately 60 to 70 percent of their time at the hospital either reviewing charts or attending educational and committee meetings. The record is not clear whether the 60 to 70 percent also includes the time spent by the QI staff nurse in her PACU duties at the hospital. Employer’s Exhibit 99 reflects that one of the QI nurses, Amy Kennedy, attended three of the monthly Teaching Tool Steering committee meetings, two in April 2001 and one in June 2001, but she did not attend any of the meetings of this committee in 2002.

The QI nurses are required to maintain an RN license in the state and have educational requirements similar to the staff nurses at the hospital. Employer’s Exhibit 85 reflects that two

of the QI nurses attended three classes in 2002, and one of these two also attended nine classes in 2001, while the other did not attend any classes in 2001. Exhibit 85 also reflects that a third QI nurse, Cheryl Kelly, attended several classes in 2001 and 2002. However, Exhibit 85 includes classes Kelly attended in her capacity as a PACU nurse and the record fails to reflect exactly how many of the listed classes were taken in her capacity as QI staff nurse. Employer's Exhibit 86 reflects that Kelly attended four monthly meetings in 2001 on the Clinical Practice and Research council, though again the record fails to reflect whether she attended these meetings as a QI staff nurse or as a PACU nurse. Attendance at these council meetings is not mandatory or required for any of the nurses.

QI nurses report to separate supervision. They report to the manager of the Quality Management department, who in turn reports to Vice-President for Quality Services and Information Management Gary LaBlance and not to Vice-President of Family & Child Services Velinda Block. QI nurses, unlike the staff nurses at the hospital, are salaried. The record does not reflect what hours they work. QI nurses do not have to wear uniforms. They do not perform any direct patient care duties, which is the primary function of the staff nurses at the hospital.

I find that the QI nurses do not have a sufficiently strong community of interest with the staff nurses at the hospital so as to rebut the appropriateness of the single-facility hospital unit. QI nurses report to different supervisors who retain significant local autonomy despite the centralization of many administrative functions. QI nurses have different working conditions, including working in a different work area and not wearing uniforms, and they are salaried while staff nurses are hourly. QI nurses do not provide direct patient care, which is the main function of the staff nurses at the hospital.

While QI nurses spend time at the hospital, the record fails to reflect how much of this time is spent in contact with the hospital staff nurses as opposed to other hospital staff. While one QI nurse reviews "charts", the record fails to reflect what contact, if any, the QI nurse has

with the hospital staff nurses while performing these reviews. QI nurses do not float to departments within the hospital, nor do staff nurses at the hospital float to the Oganizational Improvement department. There have been no temporary transfers or assignments between hospital departments and the Organizational Improvement department. Thus, based on a community of interest analysis, the Employer has failed to carry its burden of overcoming the single-facility presumption. I shall therefore exclude the QI Coordinators and the QI staff nurse in the Organizational Improvement department from the single-facility unit found appropriate here.

2. Health Promotion and Education

The Employer employs two RNs in the Health Promotion and Education department, which was formerly called the Communication and Marketing department. One is a Health Promotion and Education staff nurse and the other is a Community Relations Instructor. Both of these individuals previously worked at departments in the hospital. One transferred to Health Promotion and Education in 1995, and one transferred in 1999. As with the other offsite departments, Health Promotion and Education nurses do not float to the hospital, nor do hospital nurses float to the Health Promotion and Education department at Taylor.

Health Promotion and Education RNs assist in marketing the facility through educating the community, including parents and other health care providers. These RNs teach classes in the community, including first aid classes for families, car seat safety, and cardiopulmonary resuscitation. These RNs do not perform any direct patient care. The Health Promotion and Education RNs have the same general orientation program as other nurses, and have the same training and education requirements. They are also subject to the same administrative policies as are all the Employer's employees. The Chief Executive Nurse testified that the Health Promotion and Education nurses have contact "with other departments and staff" at the hospital, but the record fails to indicate the nature or frequency of such contact, other than attendance at

educational classes. Employer's Exhibit 113 reflects that the two nurses in this department atended one educational class in 2001 and none in 2002, which fails to establish functional integration or regular interchange.

Health Promotion and Education RNs have separate supervision. They report to Vice-President of Pediatric Services Development Todd Sklamberg. As previously noted, the department managers and vice-presidents exercise significant local control of the employees at the offsite locations, including the Taylor facility. The working conditions of the Health Promotion and Education RNs are different from those of the staff nurses at the hospital in that the Health Promotion and Education RNs work in a physically separate facility, they punch a different time clock, and they are not required to wear uniforms. Their function is primarily educational while the primary function of the hospital staff nurses is to provide direct patient care. All of these factors outweigh the limited interchange and the centralization of certain administrative functions, and thus the Employer has failed to overcome the appropriateness of the petitioned-for single-facility unit. Accordingly, the Health Promotion and Education nurses shall be excluded from the unit.

3. Nursing Education and Research

The Employer employs two Clinical Education Specialists in this department who are at issue here. Both of these individuals previously worked in departments at the hospital. One transferred to Nursing Education and Research in 2002, and one transferred to this department in 1996. This department also includes a Nurse Information Systems Specialist and a Nurse Researcher, both of whom work at the hospital and have been stipulated to be appropriately included in the petitioned-for unit.

The two Clinical Education Specialists spend 70 percent of their time at the Taylor facility where the classrooms are located. They educate nursing staff, including staff nurses, patient care assistants, unit secretaries, and other support staff, in such areas as new equipment and

protocols. They also help conduct orientation for new nurses, including administering the nursing medications test, which orientation takes place at the Taylor facility. They are licensed RNs and have the same educational background as the hospital staff nurses. They are subject to the same administrative policies as the staff nurses at the hospital. They serve on the School of Nursing committee and the education council, which meet monthly. These meetings are voluntary and take place at either the hospital or the Taylor facility.

Clinical Education Specialists spend 30 percent of the their time at the hospital, though the record does not reflect what contact the Clinical Education Specialists have with the staff nurses during this time, other than attending the educational and council meetings. Employer's Exhibit 104 reflects that Clinical Education Specialist Hacker attended classes on 14 days in 2002 and 14 days in 2001. Clinical Education Specialist Bierhals spent approximately 11 days in classes from April through November 2002. Employer's Exhibit 107 indicates that a former Clinical Education Specialist no longer in this department attended seven meetings of the Nursing Guidelines committee in 2001. Only one current Clinical Education Specialist has attended Nursing Guidelines committee meetings and she only attended three meetings in 2002.

The Clinical Education Specialists share the same immediate supervisor as the Nurse Researcher and the Nurse Information Systems Specialist, both of whom work at the hospital and are stipulated to be in the bargaining unit. This immediate supervisor reports to Terry Bryant, the director of the Nursing Education and Research Department. Bryant, in turn, reports to Velinda Block, the vice-president of Family & Child Services. Clinical Education Specialists, however, do not float to the hospital, nor do staff nurses at the hospital float to the Nursing Education and Research department at Taylor. There is no evidence that the Clinical Education Specialists at the Taylor facility can be temporarily assigned to the hospital to perform the duties of the Nurse Researcher or the Nurse Information Systems Specialist.

The record fails to reflect how the job functions of the Clinical Education Specialists at the Taylor facility compare with those of the Nurse Researcher and the Nurse Information Systems Specialist. There is very little evidence of the exact nature of the Nursing Researcher's duties, or what hours she works. The Nurse Information Systems Specialist spends 30 percent of her time educating nursing staff on clinical documentation, while the Clinical Education Specialists focus on nursing orientation for new employees, which is conducted at the Taylor facility. The record fails to reflect how the Nurse Information Systems Specialist spends the other 70 percent of her time. As the record is not clear as to the degree of interchange, contact, similarity of employment conditions, and managerial and supervisory controls, the Clinical Education Specialists may vote subject to challenge.

III. Eligibility Formula for Per Diem and PRN Nurses

The Employer contends that the Board's traditional formula for per diem and PRN nurses articulated in *Davison Paxon*, 185 NLRB 21 (1970), and reaffirmed in *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990), is not appropriate in this case. Under the traditional *Davison Paxon* formula, per diem and PRN nurses must work an average of 4 hours per week in the 13-week period preceeding the eligibility cut off date to be eligible to vote. The Employer contends that the eligibility formula for this case should be 200 hours in the proceeding 12 months to allow for eligibility of "seasonal" nurses who work only during the flu season from about January to March or April.

The Employer failed to provide any justification for this departure from the Board's traditional formula. The Employer's witnesses admitted that the "vast majority" of the per diem and PRN nurses work on an on-going basis throughout the year. PRN nurses at the hospital are required to work 36 hours in a 4-week period, and per diem nurses are required to work a minimum of 30 hours in a 6-week period. The Employer failed to establish the number of PRNs or per diem nurses who work 200 or fewer hours in a 12 month period. Rather, the record

simply reflects that a "few nurse practitioners" in the ER work more "flexible" hours and are not required to meet the minimum per diem or PRN requirements. The only specific example on the record was that one of the staff nurses "a couple of years ago" was "Ms. Missouri" and could only work at the hospital certain months of the year due to her other commitments as "Ms. Missouri". These minimal examples do not establish "extraordinary" circumstances warranting departure from the traditional formula, particularly where the "vast majority" of the per diem and PRN nurses work throughout the year. Therefore, I shall adhere to the *Davison-Paxon* formula and eligible per diem and PRNs nurses will be those who have worked an average of 4 hours per week in the 13-week period preceeding the eligibility cut off date.

Accordingly, I have determined that the appropriate unit is as follows:

> All full-time, part-time, per diem, and PRN Registered Nurses employed by the St. Louis Children's Hospital; including Staff Nurses, Nurse Practitioners, Clinical Nurse Specialists, Nurse Researcher, Advance Practice Nurses, Transplant Nurse Coordinators, Nurse Clinicians, OR/APC Nurse Clinicians, Infection Control Specialists, Surgical Assistant Registered Nurses, Clinical Educators, Nurse Coordinator, Risk Management Coordinator, Nursing Information Systems Specialists, Health Information Nurse Specialists, Occupational Health Nurse, Home Health Coordinators, Utilization Management Coordinators, Clinical Auditor Leads, Senior Transplant Financial Coordinators, Transplant Financial Coordinators, and Nurse Auditors, employed at the Employer's 1 Children's Place, St. Louis, Missouri facility;[5] EXCLUDING Assistant Managers, Managers, Directors, Administrative Supervisors,[6] office clerical and professional employees, guards and supervisors as defined in the Act, and all other employees.

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[5] As noted above, the two Clinical Education Specialists who work at the Taylor Avenue facility may vote subject to the challenge procedures.

[6] The parties stipulated that Administrative Supervisors John Baker, Pat Freukes, Mary Kay Pearson, and Jim Ritter also are supervisors within the meaning of §2(11) of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Missouri Nurses Association (MONA), United American Nurses (UAN), American Nurses Association (ANA), AFL-CIO, CLC.

ELECTION NOTICES

In accordance with Section 102.30 of the Board's Rules and Regulations, the Employer shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election. These notices are to remain posted until the end of the election. Failure to post the election notices as required will be grounds for setting aside the election whenever proper and timely objections are filed. A party is estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it

notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice. As used in this paragraph, the term "working day" means an entire 24-hour period excluding Saturdays, Sundays, and holidays.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969) Accordingly, it is hereby directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994) The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at 1222 Spruce Street, Room 8.302, Saint Louis, Missouri, on or before January 7, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by January 14, 2003.

Dated December 31, 2002

at St. Louis, Missouri

Ralph R. Tremain, Regional Director
National Labor Relations Board
Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63103-2829

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